

CHAPTER 364

CORRECTIONS

HOUSE BILL 23-1013

BY REPRESENTATIVE(S) Amabile, Bacon, Bird, Boesenecker, Brown, deGruy Kennedy, Dickson, Froelich, Gonzales-Gutierrez, Herod, Jodeh, Lindsay, Lindstedt, Mabrey, Michaelson Jenet, Ortiz, Parenti, Sharbini, Sirota, Snyder, Story, Velasco, Weissman, Willford, Woodrow, Young, Joseph, Marshall, McCormick, McCluskie;
also SENATOR(S) Fields and Rodriguez, Buckner, Gonzales, Hansen, Jaquez Lewis, Kolker, Marchman, Moreno, Priola.

AN ACT

CONCERNING MEASURES TO REGULATE THE USE OF RESTRICTIVE PRACTICES ON INDIVIDUALS IN CORRECTIONAL FACILITIES, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **add** 17-1-167 as follows:

17-1-167. Use of restraints for state inmates - criteria - documentation - intake assessment - report - rules - definitions. (1) **BY JULY 1, 2027, THE DEPARTMENT SHALL IMPLEMENT POLICIES AND PRACTICES THAT CONFORM TO THE MINIMUM STANDARDS PRESCRIBED BY THE MOST UPDATED RESTRAINT AND SECLUSION STANDARDS OF THE NATIONAL COMMISSION ON CORRECTIONAL HEALTH CARE. THE DEPARTMENT SHALL CONTINUOUSLY AMEND ITS PRACTICES AND POLICIES TO COMPLY, AT A MINIMUM, WITH THE THOSE MINIMUM STANDARDS.**

(2) (a) A FACILITY OR QUALIFIED FACILITY SHALL ENSURE THAT THE USE OF RESTRAINT IS DOCUMENTED AND MAINTAINED IN THE ELECTRONIC HEALTH RECORD OF THE INDIVIDUAL WHO WAS RESTRAINED. AT A MINIMUM, THE FACILITY OR QUALIFIED FACILITY SHALL DOCUMENT:

(1) THE ORDER FOR CLINICAL RESTRAINT, THE DATE AND TIME OF THE ORDER, AND THE SIGNATURE OF THE LICENSED OR LICENSE-ELIGIBLE MENTAL HEALTH PROVIDER WHO ISSUED THE CLINICAL RESTRAINT ORDER. IF THE ORDER IS AUTHORIZED BY TELEPHONE, THE ORDER MUST BE TRANSCRIBED AND SIGNED AT THE TIME OF ISSUANCE BY A PERSON WITH AUTHORITY TO ACCEPT ORDERS. THE ORDERING LICENSED OR LICENSE-ELIGIBLE MENTAL HEALTH PROVIDER SHALL SIGN THE ORDER AS SOON AS PRACTICABLE.

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

(II) A CLEAR EXPLANATION OF THE CLINICAL BASIS FOR USE OF THE CLINICAL RESTRAINT, INCLUDING THE LESS INTRUSIVE INTERVENTIONS THAT WERE EMPLOYED AND FAILED, AND EVIDENCE OF THE IMMEDIATE CIRCUMSTANCES JUSTIFYING THE BELIEF THAT THE USE OF RESTRAINT WAS TO PREVENT THE INDIVIDUAL FROM COMMITTING IMMINENT AND SERIOUS HARM TO THE INDIVIDUAL'S SELF OR ANOTHER PERSON;

(III) THE SPECIFIC BEHAVIORAL CRITERIA THE INDIVIDUAL MUST EXHIBIT FOR THE CLINICAL RESTRAINT EPISODE TO BE TERMINATED;

(IV) ANY MODIFICATIONS TO THE ORDER, AND THE TIME AND DATE, AND THE SIGNATURE OF THE LICENSED OR LICENSE-ELIGIBLE MENTAL HEALTH PROVIDER, OR MENTAL HEALTH CLINICIAN AS DEFINED BY DEPARTMENT RULE OR DESIGNATED BY THE DEPARTMENT, WHO MODIFIES THE ORDER;

(V) THE DATE AND TIME OF AN ORDER MODIFICATION, THE DATE AND TIME OF THE MODIFICATION, AND THE SIGNATURE OF THE LICENSED OR LICENSE-ELIGIBLE MENTAL HEALTH PROVIDER, OR MENTAL HEALTH CLINICIAN AS DEFINED BY DEPARTMENT RULE OR DESIGNATED BY THE DEPARTMENT, WHO ISSUED THE CLINICAL RESTRAINT ORDER. IF THE ORDER IS MODIFIED BY TELEPHONE, THE MODIFICATION MUST BE TRANSCRIBED AND SIGNED AT THE TIME OF ISSUANCE BY A PERSON WITH AUTHORITY TO ACCEPT THE MODIFICATION. THE ORDERING LICENSED OR LICENSE-ELIGIBLE MENTAL HEALTH PROVIDER, OR MENTAL HEALTH CLINICIAN AS DEFINED BY DEPARTMENT RULE OR DESIGNATED BY THE DEPARTMENT, SHALL SIGN THE ORDER AS SOON AS PRACTICABLE; AND

(VI) THE DATE AND TIME OF THE TERMINATION OF THE ORDER, THE SIGNATURE OF THE PERSON WHO TERMINATED THE ORDER, THE OBSERVATIONS, AND EVIDENCE THAT THE INDIVIDUAL EXHIBITED BEHAVIOR JUSTIFYING THE TERMINATION OF THE ORDER.

(b) THE FACILITY OR QUALIFIED FACILITY SHALL ENSURE THE DOCUMENTATION AND RETENTION REQUIRED PURSUANT TO THIS SECTION ARE CONDUCTED PURSUANT TO ALL APPLICABLE STATE AND FEDERAL LAWS REGARDING THE CONFIDENTIALITY OF THE INDIVIDUAL'S INFORMATION AND SHALL ENSURE AN INDIVIDUAL MAY ACCESS THE INFORMATION OR DEMAND RELEASE OF THE INFORMATION TO A THIRD PARTY.

(3) A QUALIFIED FACILITY SHALL PERFORM AN EVALUATION UPON EVERY INDIVIDUAL'S INTAKE TO THE RESPECTIVE FACILITY FOR THE PURPOSE OF ASSESSING THE INDIVIDUAL'S RISK OF SELF-HARM BEHAVIORS AND WHETHER THE INDIVIDUAL HAS BEEN PREVIOUSLY SUBJECTED TO CLINICAL FOUR-POINT RESTRAINTS. A LICENSED OR LICENSE-ELIGIBLE MENTAL HEALTH PROVIDER, MENTAL HEALTH CLINICIAN AS DEFINED BY DEPARTMENT RULE OR DESIGNATED BY THE DEPARTMENT, QUALIFIED HEALTH-CARE PROVIDER, OR MENTAL HEALTH ADMINISTRATOR SHALL INITIATE APPROPRIATE SAFETY PLANNING TO ADDRESS CONCERNS AND ATTEMPT TO AVOID THE USE OF CLINICAL RESTRAINTS, IF POSSIBLE.

(4) (a) SUBJECT TO THE PROVISIONS OF THIS SECTION, A QUALIFIED FACILITY SHALL NOT USE AN INVOLUNTARY MEDICATION ON AN INDIVIDUAL UNLESS:

(I) THE INDIVIDUAL IS DETERMINED TO BE DANGEROUS TO THE INDIVIDUAL'S SELF OR ANOTHER PERSON, AND THE TREATMENT IS IN THE INDIVIDUAL'S MEDICAL INTEREST;

(II) THE QUALIFIED FACILITY HAS EXHAUSTED ALL LESS RESTRICTIVE ALTERNATIVE INTERVENTIONS;

(III) THE INVOLUNTARY MEDICATION IS ADMINISTERED AFTER EXHAUSTION OF PROCEDURAL REQUIREMENTS ESTABLISHED PURSUANT TO THIS SECTION; AND

(IV) THE MAJORITY OF THE INVOLUNTARY MEDICATION COMMITTEE DESCRIBED IN SUBSECTION (4)(b) OF THIS SECTION APPROVES OF THE INVOLUNTARY MEDICATION.

(b) THE QUALIFIED FACILITY SHALL CONVENE AN INVOLUNTARY MEDICATION COMMITTEE, COMPRISED OF A LICENSED PSYCHIATRIST, A LICENSED PSYCHOLOGIST, A LICENSED OR LICENSE-ELIGIBLE MENTAL HEALTH PROVIDER, AND THE SUPERINTENDENT OF THE QUALIFIED FACILITY OR THE SUPERINTENDENT'S DESIGNEE.

(c) AN ORDER FOR AN INVOLUNTARY MEDICATION MUST NOT:

(I) EXCEED ONE HUNDRED EIGHTY DAYS FROM THE DATE OF THE ORDER; AND

(II) PERMIT THE USE OF MORE THAN TEN DIFFERENT PSYCHOTROPIC MEDICATIONS DURING THE ONE HUNDRED EIGHTY-DAY PERIOD. THIS DOES NOT LIMIT THE AMOUNT OF DOSES OF THE MEDICATIONS TO BE ADMINISTERED, AS MEDICALLY APPROPRIATE.

(d) A QUALIFIED FACILITY SHALL ENSURE THAT THE USE OF INVOLUNTARY MEDICATION IS DOCUMENTED AND MAINTAINED IN THE INDIVIDUAL'S ELECTRONIC HEALTH RECORD. AT A MINIMUM, THE QUALIFIED FACILITY SHALL DOCUMENT:

(I) THE ORDER FOR INVOLUNTARY MEDICATION;

(II) THE DATE AND TIME OF THE ORDER; AND

(III) A CLEAR EXPLANATION OF THE CLINICAL BASIS FOR USE OF THE INVOLUNTARY MEDICATION, INCLUDING THE LESS INTRUSIVE INTERVENTIONS THAT WERE EMPLOYED AND FAILED AND EVIDENCE OF THE IMMEDIATE CIRCUMSTANCES JUSTIFYING THE DETERMINATION THAT THE INDIVIDUAL IS DANGEROUS TO THE INDIVIDUAL'S SELF OR ANOTHER PERSON AND THAT THE TREATMENT IS IN THE INDIVIDUAL'S MEDICAL INTEREST.

(e) THE FACILITY OR QUALIFIED FACILITY SHALL ENSURE THE DOCUMENTATION AND MAINTENANCE REQUIRED PURSUANT TO THIS SECTION ARE CONDUCTED PURSUANT TO ALL APPLICABLE STATE AND FEDERAL LAWS REGARDING THE CONFIDENTIALITY OF THE INFORMATION.

(f) THIS SUBSECTION (4) DOES NOT APPLY TO EMERGENCY MEDICINE ADMINISTERED PURSUANT TO DEPARTMENT POLICY.

(5) (a) ON OR BEFORE JANUARY 1, 2024, AND ON OR BEFORE JANUARY 1 EACH

YEAR THEREAFTER, THE EXECUTIVE DIRECTOR OF THE DEPARTMENT SHALL SUBMIT A REPORT TO THE JUDICIARY COMMITTEES OF THE SENATE AND HOUSE OF REPRESENTATIVES, OR ANY SUCCESSOR COMMITTEES, CONCERNING THE USE OF CLINICAL RESTRAINTS AND INVOLUNTARY MEDICATION IN THE PRECEDING CALENDAR YEAR. AT A MINIMUM, THE REPORT MUST INCLUDE:

(I) THE TOTAL NUMBER OF CLINICAL AMBULATORY RESTRAINT EPISODES AND CLINICAL FOUR-POINT RESTRAINT EPISODES;

(II) THE TOTAL NUMBER OF INVOLUNTARY MEDICATION ORDERS ISSUED;

(III) THE AVERAGE AMOUNT OF TIME OF A CLINICAL AMBULATORY RESTRAINT EPISODE AND CLINICAL FOUR-POINT RESTRAINT EPISODE;

(IV) THE AVERAGE DURATION OF INVOLUNTARY MEDICATION ORDERS ISSUED;

(V) THE LONGEST CLINICAL AMBULATORY RESTRAINT EPISODE AND THE LONGEST CLINICAL FOUR-POINT RESTRAINT EPISODE;

(VI) THE PERCENTAGE OF TOTAL CLINICAL AMBULATORY RESTRAINT EPISODES THAT EXCEEDED TWO HOURS, AND THE PERCENTAGE OF TOTAL CLINICAL FOUR-POINT RESTRAINT EPISODES THAT EXCEEDED TWO HOURS;

(VII) THE PERCENTAGE OF TOTAL CLINICAL AMBULATORY RESTRAINT EPISODES THAT INVOLVED AN INDIVIDUAL DIAGNOSED WITH A BEHAVIORAL HEALTH DISORDER OR INTELLECTUAL OR DEVELOPMENTAL DISABILITY, AND THE PERCENTAGE OF TOTAL CLINICAL FOUR-POINT RESTRAINT EPISODES THAT INVOLVED AN INDIVIDUAL DIAGNOSED WITH A BEHAVIORAL HEALTH DISORDER OR INTELLECTUAL OR DEVELOPMENTAL DISABILITY;

(VIII) THE PERCENTAGE OF TOTAL INVOLUNTARY MEDICATION ORDERS THAT INVOLVED AN INDIVIDUAL DIAGNOSED WITH A BEHAVIORAL HEALTH DISORDER OR INTELLECTUAL OR DEVELOPMENTAL DISABILITY, AND THE PERCENTAGE OF TOTAL CLINICAL FOUR-POINT RESTRAINT EPISODES THAT INVOLVED AN INDIVIDUAL DIAGNOSED WITH A BEHAVIORAL HEALTH DISORDER OR INTELLECTUAL OR DEVELOPMENTAL DISABILITY;

(IX) THE PERCENTAGE OF TOTAL CLINICAL AMBULATORY RESTRAINT EPISODES THAT INVOLVED AN INDIVIDUAL WHO WAS SUBJECTED TO THE RESTRAINT FOR A SECOND OR SUBSEQUENT EPISODE WITHIN THE YEAR, AND THE PERCENTAGE OF TOTAL CLINICAL FOUR-POINT RESTRAINT EPISODES THAT INVOLVED AN INDIVIDUAL WHO WAS SUBJECTED TO THE RESTRAINT FOR A SECOND OR SUBSEQUENT EPISODE WITHIN THE YEAR;

(X) THE PERCENTAGE OF TOTAL INVOLUNTARY MEDICATION ORDERS THAT INVOLVED AN INDIVIDUAL WHO WAS SUBJECTED TO A SECOND OR SUBSEQUENT ORDER WITHIN THE YEAR;

(XI) THE TOTAL NUMBER OF INVOLUNTARY MEDICATION ORDERS THAT EXCEEDED ONE HUNDRED EIGHTY DAYS; AND

(XII) AN IMPLEMENTATION PLAN TO CONFORM WITH THE REQUIREMENTS PURSUANT TO SUBSECTION (1) OF THIS SECTION, INCLUDING TIMELINES, A SUMMARY OF PROGRESS, AND A COMPLIANCE REPORT.

(b) BEGINNING IN 2024 AND EACH YEAR THEREAFTER, THE DEPARTMENT SHALL PRESENT FINDINGS FROM THE REPORT DESCRIBED BY THIS SECTION TO THE HOUSE OF REPRESENTATIVES AND SENATE JUDICIARY COMMITTEES, OR ANY SUCCESSOR COMMITTEES, DURING THE HEARINGS HELD PURSUANT TO THE "SMART ACT", PART 2 OF ARTICLE 7 OF TITLE 2.

(c) NOTWITHSTANDING THE REQUIREMENT IN SECTION 24-1-136 (11)(a)(I), THE REQUIREMENT TO SUBMIT THE REPORT REQUIRED IN THIS SUBSECTION (5) CONTINUES INDEFINITELY.

(d) THE DEPARTMENT SHALL ENSURE THE REPORT REQUIRED IN THIS SUBSECTION (5) DOES NOT DISCLOSE ANY INFORMATION IN VIOLATION OF APPLICABLE STATE AND FEDERAL LAWS REGARDING THE CONFIDENTIALITY OF INDIVIDUALS' INFORMATION.

(6) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "CLINICAL AMBULATORY RESTRAINT" MEANS A DEVICE USED TO INVOLUNTARILY LIMIT AN INDIVIDUAL'S FREEDOM OF MOVEMENT, BUT STILL PERMITS THE ABILITY OF THE INDIVIDUAL TO WALK AND MOVE WHILE SUBJECTED TO THE DEVICE.

(b) "CLINICAL FOUR-POINT RESTRAINT" MEANS A DEVICE USED TO INVOLUNTARILY LIMIT AN INDIVIDUAL'S FREEDOM OF MOVEMENT BY SECURING THE INDIVIDUAL'S ARMS AND LEGS.

(c) "CLINICAL RESTRAINT" MEANS A DEVICE USED TO INVOLUNTARILY LIMIT AN INDIVIDUAL'S FREEDOM OF MOVEMENT. "CLINICAL RESTRAINT" INCLUDES CLINICAL AMBULATORY RESTRAINTS AND CLINICAL FOUR-POINT RESTRAINTS.

(d) "CORRECTIONAL FACILITY" HAS THE SAME MEANING AS SET FORTH IN SECTION 17-1-102 (1.7).

(e) "DEPARTMENT" MEANS THE DEPARTMENT OF CORRECTIONS, CREATED AND EXISTING PURSUANT TO SECTION 24-1-128.5.

(f) "FACILITY" MEANS A CORRECTIONAL FACILITY OR A PRIVATE CONTRACT PRISON.

(g) "INVOLUNTARY MEDICATION" MEANS GIVING AN INDIVIDUAL MEDICATION INVOLUNTARILY; EXCEPT THAT "INVOLUNTARY MEDICATION" DOES NOT INCLUDE THE INVOLUNTARY ADMINISTRATION OF MEDICATION OR ADMINISTRATION OF MEDICATION FOR VOLUNTARY LIFE-SAVING MEDICAL PROCEDURES.

(h) "LICENSED OR LICENSE-ELIGIBLE MENTAL HEALTH PROVIDER" HAS THE SAME MEANING AS DEFINED IN SECTION 27-60-108 (2)(a), OR MEANS A PERSON WHO HAS COMPLETED THE EDUCATION REQUIREMENTS TO BE A LICENSED MENTAL HEALTH PROVIDER AS DEFINED IN SECTION 27-60-108 (2)(a), BUT IS IN THE PROCESS OF

COMPLETING THE EXPERIENCE AND EXAMINATION REQUIREMENTS TO BECOMING LICENSED.

(i) "PRIVATE CONTRACT PRISON" HAS THE SAME MEANING AS SET FORTH IN SECTION 17-1-102 (7.3).

(j) "QUALIFIED FACILITY" MEANS:

(I) A CORRECTIONAL FACILITY INFIRMARY;

(II) THE SAN CARLOS CORRECTIONAL FACILITY; AND

(III) THE DENVER WOMEN'S CORRECTIONAL FACILITY.

(k) "QUALIFIED HEALTH-CARE PROVIDER" MEANS A LICENSED PHYSICIAN, A LICENSED ADVANCED PRACTICE REGISTERED NURSE, OR A LICENSED REGISTERED NURSE.

SECTION 2. In Colorado Revised Statutes, 17-1-113.9, **amend** (1) as follows:

17-1-113.9. Use of administrative segregation for state inmates - reporting.

(1) Notwithstanding section 24-1-136 (11)(a)(I), on or before January 1, 2012, and each January 1 thereafter, the executive director shall provide a written report to the judiciary committees of the senate and house of representatives, or any successor committees, concerning the status of administrative segregation; reclassification efforts for ~~offenders~~ INDIVIDUALS DIAGNOSED WITH ~~mental~~ BEHAVIORAL health disorders or intellectual and developmental disabilities, including duration of stay, reason for placement, and number and percentage discharged; and any internal reform efforts since July 1, 2011. THE REPORT MUST INCLUDE DATA CONCERNING THE PLACEMENT OF INDIVIDUALS IN ALL SETTINGS WITH HEIGHTENED RESTRICTIONS, INCLUDING THE TOTAL NUMBER OF PLACEMENTS IN EACH SETTING, THE TOTAL NUMBER OF PLACEMENTS IN EACH SETTING INVOLVING AN INDIVIDUAL DIAGNOSED WITH A BEHAVIORAL HEALTH DISORDER OR INTELLECTUAL OR DEVELOPMENTAL DISABILITY, THE AVERAGE DURATION OF STAY OF AN INDIVIDUAL IN EACH SETTING, THE REASONS FOR PLACEMENT IN EACH SETTING, AND THE TOTAL NUMBER OF INDIVIDUALS DISCHARGED FROM EACH SETTING.

SECTION 3. Appropriation. (1) For the 2023-24 state fiscal year, \$18,872 is appropriated to the department of corrections. This appropriation is from the general fund. To implement this act, the department may use this appropriation as follows:

(a) \$12,000 for the purchase of information technology services; and

(b) \$6,872 for use by institutions for operating expenses related to the mental health subprogram.

(2) For the 2023-24 state fiscal year, \$12,000 is appropriated to the office of the governor for use by the office of information technology. This appropriation is from reappropriated funds received from the department of corrections under subsection (1)(a) of this section. To implement this act, the office may use this appropriation to provide information technology services for the department of corrections.

SECTION 4. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety.

Approved: June 5, 2023